

FILED
DEC 20 2012
CLERK, US DISTRICT COURT
NORFOLK, VA

FINAL ORDER

The petition was referred to a United States Magistrate Judge for report and recommendation pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Local Civil Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia. The Magistrate Judge's Report and Recommendation filed November 16, 2012 recommends dismissal of the petition with prejudice. Each party was advised of his right to file written objections to the findings and recommendations made by the Magistrate Judge. On December 3, 2012, the court received

petitioner's Objections to the Report and Recommendation. The respondent filed no reply to the Objections, and the time for responding has now expired.

The court does hereby adopt the findings and recommendations set forth in the Report and Recommendation filed November 16, 2012, and it is therefore ORDERED that respondent's Motion to Dismiss be GRANTED, and that the petition be DENIED and DISMISSED with prejudice. It is further ORDERED that judgment be entered in favor of respondent.

Petitioner may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of this court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty (30) days from the date of entry of such judgment.

Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right," therefore, the court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. See Miller-El v. Cockrell, 123 S.Ct. 1029, 1039 (2003).

The Clerk shall mail a copy of this Final Order to petitioner and to counsel of record for respondent.

/s/

Rebecca Beach Smith
Chief
United States District Judge

RBS

REBECCA BEACH SMITH
CHIEF UNITED STATES DISTRICT JUDGE

Norfolk, Virginia
December 20, 2012